

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States of America,

Crim. No. 96-81(1) (PAM)

Plaintiff,

v.

ORDER

Paul W. Moore,

Defendant.

This matter is before the Court on Defendant's Motion to Reconsider the Court's August 21, 2007, denial of Defendant's Motion to Modify or Reduce Term of Imprisonment Pursuant to 18 U.S.C. § 3582(c)(2). Defendant's position is that he had insufficient time to file a reply to the Government's response to his Motion to Modify. Defendant requests that the Court review the reply that he filed six days after the Court denied his Motion to Modify.

In the interests of justice, the Court has reviewed the reply. Defendant challenges the Government's argument that Sentencing Guidelines Amendment 599, which guards against counting conduct twice for sentencing purposes when a defendant is convicted for using or possessing a firearm during a violent or drug-trafficking crime in violation of 18 U.S.C. § 924(c), does not apply to Defendant's sentence. The Government cited the Eighth Circuit Court of Appeals' decision in United States v. Friend, 303 F.3d 921(8th Cir. 2002) for the proposition that Amendment 599 applies only to 18 U.S.C. § 924(c) convictions. Id. at 921 (quoting U.S.S.G. Manual, Supp. to App. C. at 71 (2001)).

Defendant was convicted of narcotics violations under 21 U.S.C. §§ 841 and 846 and

of possessing a firearm as a felon in violation of 18 U.S.C. § 922(g)(1). Defendant has provided no authority indicating that Amendment 599 applies to his sentence as imposed. Accordingly, **IT IS HEREBY ORDERED** that Defendant's Motion to Reconsider the Court's August 21, 2007, denial of Defendant's Motion to Modify or Reduce Term of Imprisonment Pursuant to 18 U.S.C. § 3582(c)(2) (Docket No. 208) is **DENIED**.

Dated: September 17, 2007

s/ Paul A. Magnuson

Paul A. Magnuson
United States District Court Judge